

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

RECO MITCHNER,

Plaintiff,

v.

Criminal Case No. 02-20058-BC
Civil Case No. 04-10208-BC
Honorable David M. Lawson

UNITED STATES OF AMERICA,

Defendant.

_____ /

ORDER DENYING A CERTIFICATE OF APPEALABILITY

This Court has denied Reco Mitchner's motion to vacate, set aside, or correct sentence which was brought pursuant to 28 U.S.C. § 2255. The matter is now before the Court on whether a certificate of appealability should issue.

A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Courts must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App. P. 22(b); *In re Certificates of Appealability*, 106 F.3d 1306, 1307 (6th Cir. 1997). To receive a certificate of appealability, "a petitioner must show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotes and citations omitted).

The Court denied the petitioner's motion on two grounds. First, the Court found that the petitioner failed to timely file objections to the magistrate judge's report and recommendation. The

petitioner offered as justification for his failure his misguided belief that he did not need lodge objections at all. Second, the Court concluded that the magistrate judge was correct in finding that the petitioner's guilty plea waived his right to appeal and the failure of his counsel to file a direct appeal therefore could not be considered ineffective assistance. The Court believes that reasonable jurists would not resolve these issues differently, and the petitioner should not be encouraged to proceed further.

Accordingly, it is **ORDERED** that a certificate of appealability is **DENIED** with respect to the petitioner's claims.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: March 9, 2006

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on March 9, 2006.

s/Tracy A. Jacobs
TRACY A. JACOBS